

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 181 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

SAIBABA CONSTRUCTION COMPANY THRO'PARTNERS

Versus

VRAJ VALLABHPURA CO.OPERATIVE HOUSING SOCIETY LIMITED

-----

Appearance:

MR AJ PATEL for Petitioners

MR AS PANDYA for Respondent No. 1

-----

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 09/04/97

ORAL JUDGEMENT

The Appeal From Order is at the stage of admission. It has been admitted and is being taken up for final hearing.

The orders challenged happen to be the orders of the learned Judge, City Civil Court, Ahmedabad, dated April 3, 1997. The Notice of Motion was taken out in Civil Suit No. 5619 of 1996, along with the Application at Exh.5.

As I prefer to decide and dispose of this Appeal From Order only on a narrow ground, I do not find it necessary to dwell upon the details. It appears that, a purshis came to be filed after the conclusion of the arguments before the Court below. The arguments were heard on a particular date, but, on that date, the clients of learned Counsel Mr. Bengali were not present. Therefore, the purshis came to be presented on the next day. It is indeed true that, before the presentation of the purshis, the same was shown to the Counsel for the other side. The said Counsel had his own reservations and had not agreed to passing of the orders as suggested under the purshis. There was the notation by him on the purshis saying so.

It requires to be appreciated that, the said purshis was not a permissive purshis alone, but was placing certain obligations on the shoulders of the other side, who had objected to passing of the orders on the basis of the purshis. Despite this, it appears that, the orders have been passed on the basis of the said purshis which came to be objected by the other side.

Let us have a look at the say of the learned Judge in the operative orders. Placing reliance upon the purshis, the defendants have been permitted to carry on construction in respect of 123 flats only. The defendants have been permitted to allot the same to the original 123 members of the Society. The defendants have been called upon to keep the remaining land open for the construction of 144 flats of the similar nature for 144 members of the Society who were opposing the construction in question.

The plain reading of the orders which are under challenge would go to show that, there was, indeed, a concession under which, the defendants could be permitted to carry on construction in respect of 123 flats. From the use of word "only", it appears that, there could be a possibility of the construction of many more flats. Nonetheless, the defendants have been permitted to construction 123 flats only. There is a further qualification qua the allotment of these flats because, it has been said that the said 123 flats are to be allotted to the "original 123 members of the Society". The third obligation cast upon the defendants is that, they should keep open the remaining land for the construction of 144 flats of similar nature for other 144 members. Therefore, the purshis was not merely permissive in nature which would permit the defendants to

do certain things on the basis of which, certain orders could be passed in favour of the defendants. On the contrary, the purshis was a qualified one under which, various obligations have been cast upon the shoulders of the defendants. It appears that, this could not have been done, when the learned Counsel for the other side had not agreed to pass the orders on the basis of the said purshis.

Because of this, I am of the opinion that the orders of the Court below have become unsustainable because, the matter which was required to be decided on merits and according to law, came to be decided on the basis of the purshis, which was clearly onerous so far as the defendants are concerned. In my view, therefore, the present Appeal requires to be allowed and the same is hereby accordingly allowed and the orders under challenge are hereby quashed and set aside.

The Court below is requested to hear and decide the Notice of Motion and Application at Exh.5 on merits and according to law, after affording a reasonable opportunity of being heard to the parties. The parties shall appear before the Court below on 11th April 1997 to receive the directions of the said Court regarding the further proceedings in the matter. It would be appropriate if the Court below decides the remanded proceedings before the closure of the Courts for Summer Vacation.

There has been an apprehension coming from learned Counsel Mr. Pandya that, if the defendants are not restrained, meanwhile, irreparable loss could ensue to his client. It would be appropriate if the learned Counsel makes the necessary request in this respect to the Court below to whom the proceedings are remanded. The Court below should decide this prayer if it emanates from learned Counsel Mr. Pandya, after hearing the learned Counsel for the other side.

The Appeal From Order succeeds to the above said extent, with no order as to costs.

Direct service is permitted.

sreeram \*\*\*\*